Sprint Exhibit 1.0

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP.	)	
Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With	)	Docket No. 12-0550
Illinois Bell Telephone Company d/b/a Ameritech Illinois	)	

SprintCom, Inc., WirelessCo, L.P. through their agent Sprint Spectrum L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.

Verified Written Statement

Of

James Burt

Filed December 5, 2012

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Introduction

Q. Please state your name and business address.

A. My name is James R. Burt. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. On whose behalf are you testifying?

A. I am testifying in this proceeding on behalf of SprintCom, Inc., WirelessCo. L.P., through their agent Sprint Spectrum L.P., NPCR, Inc. D/B/A Nextel Partners, and Nextel West Corp. (collectively "Sprint").

Q. By who are you employed?

A. Sprint United Management Company ("Sprint United"), which is the management subsidiary of Sprint's parent entity, Sprint Nextel Corporation ("Sprint Nextel", i.e., as itself and its affiliated operating companies).

Q. **What is your position with Sprint United?**

A. I am Director – Policy, a position I have held since February of 2001.

Q. Please summarize your educational and professional background.

A. I received a Bachelor of Science degree in Electronics Engineering Technology from the University of South Dakota – Springfield in 1980 and a Masters in Business Administration with an emphasis in Finance from Rockhurst College in 1989.

I am responsible for developing state and federal regulatory policy and legislative policy for Sprint Nextel, including the coordination of regulatory and legislative policies across the various Sprint business units, and the advocacy of such policies before regulatory and legislative bodies. In addition, I interpret various orders, rules, or laws for implementation by Sprint Nextel.

From 1997 to February of 2001, I was Director-Local Market Planning. I was responsible for policy and regulatory position development and advocacy from a CLEC perspective. In addition, I supported Interconnection Agreement negotiations and had responsibility for various other regulatory issues pertaining to Sprint CLEC's efforts.

From 1996 to 1997, I was Local Market Director responsible for Sprint CLEC's Interconnection Agreement negotiations with BellSouth.

I was Director – Carrier Markets for Sprint Nextel's former Local Telecom Division ("LTD") from 1994 to 1996. My responsibilities included inter-exchange carrier

account management and management of one of LTD's Interexchange Carrier Service Center.

From 1991 to 1994, I was General Manager of United Telephone Long Distance, a long distance subsidiary of the former Sprint/United Telephone Company. I had profit and loss, marketing and operations responsibilities.

From 1989 to 1991, I held the position of Network Sales Manager responsible for sales of business data and network solutions within LTD.

From 1988 to 1989, I functioned as the Product Manager for data and network services also for LTD.

Prior to Sprint Nextel I worked for Ericsson Inc. for eight years with positions in both engineering and marketing.

Q. Have you testified before any regulatory commissions?

Yes. I have testified in Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas and Wisconsin and have supported the development of testimony in many other states.

Organization of Sprint Witness Testimony

Q. How many Sprint witnesses are providing testimony in these proceedings, and how has Sprint assigned the identified Issues among the Sprint witnesses?

A. There are three Sprint witnesses: Mr. Randy G. Farrar, Mr. Mark G. Felton and me. The open Issues are addressed within the testimony of all three Sprint witnesses as shown in Exhibit JRB-1.1 attached to my Verified Statement. This Exhibit states the "Issue No." and "Issue Description (& Sub Issues)" as stated in the parties' Joint Decision Point List ("Joint DPL") and then identifies by name the Sprint witness that has primary responsibility to address a given Issue. Issues that were included in the original petition, but have since been resolved are identified in Exhibit JRB-1.2 which also includes what Sprint understands to be the final agreed-to language of the Parties as to each of the resolved Issues.

Q. What is the purpose and scope of your Verified Statement?

A. The purpose and scope of my Verified Statement is twofold. First, I provide an overview perspective to assist the Illinois Commerce Commission ("ICC") in understanding this proceeding in the proper context. In addition to general background, such context includes not only how the parties are currently interconnected and have exchanged traffic for over 10 years, but also the significant industry changes that have occurred since then including an FCC order that included significant changes to the manner in which carriers exchange voice traffic. Second, on an Issue by Issue basis, I address each of the Issues in Exhibit JRB-1.1 that identifies

me as the Sprint witness. I address various Issues that are contained within Section I– Provisions related to the Purpose and Scope of the Agreements; Section II - How the Parties Interconnect; and Section VI - Billing and Payments.

Q. Are you sponsoring any Exhibits to your Verified Statement?

A. Yes. I am sponsoring the following Exhibits:

Exhibit JRB-1.1: Sprint Witness Testimony Key

Exhibit JRB-1-2: DPL - Resolved Issues Language

Exhibit JRB-1-3: Commonwealth of Puerto Rico Telecommunications Regulatory Board Arbitration Report and Order Supporting IP Interconnection

Exhibit JRB-1-4: Public Utilities Commission of Ohio Finding and Order – Ohio Administrative Code Change Supporting IP Interconnection

Exhibit JRB-1-5: AT&T FCC Petition to Launch a Proceeding Concerning TDM-to-IP Transition

Exhibit JRB-1-6: AT&T Press Release Regarding $14 Billion Network Investment

Exhibit JRB-1-7: AT&T Data Request Response – Sprint ATT-4 Illustrating AT&T Illinois IP Interconnection with AT&T Corp

Exhibit JRB-1-8: AT&T FCC ex parte Filing Supporting Non-Carrier Direct Access to Numbering Resources

Background and Overview Perspective

Q. Please briefly describe Sprint's presence and commitment to the State of Illinois.

A. Throughout its history, Sprint Nextel Corporation's wireless and wireline subsidiaries have been and continue to be leaders in competitive innovation, and have provided Illinois customers competitive communications choices for three decades. Today, Sprint continues to provide customers a choice as a significant wireless provider in the State of Illinois. Finally, Sprint is deploying its wireless network upgrade referred to as Network Vision. Network Vision is Sprint's plan to consolidate networks and technologies into a single, all new nationwide 3G and 4G LTE network to support all the ways customers use their mobile devices today and tomorrow. This network delivers enhanced network coverage, call quality and data speeds for customers in Illinois. Sprint will be able to utilize this network for Voice over LTE ("VOLTE") and other Internet Protocol services. Sprint Nextel Corporation's presence in Illinois is significant, including hundreds of millions of dollars in wireline and wireless capital investments and over 800 Illinois employees.

Q. What interconnection agreement ("ICA") are the parties currently operating under?

A. Sprint Spectrum L.P. and AT&T have been operating under an ICA that was filed in 2003 and approved by the ICC on November 5, 2003 in Docket No. 03-0569. NPCR Inc., d/b/a Nextel Partners and AT&T have been operating under an ICA that was filed in 2000 and approved by the ICC on July 19, 2000 in Docket No. 00-0409. Nextel West Corp. and AT&T have been operating under an ICA that was filed in 1999 and approved by the ICC on November 3, 1999 in Docket No. 99-NA-031. These ICAs

were subsequently the subject of various amendments, but have not been substantially modified since their respective initial filing.

Q. What is the common theme in this proceeding?

A. The common theme that runs throughout the Issues in this arbitration is that AT&T is attempting to restrict Sprint's rights under the Act and also impose obligations upon Sprint that are not required by the Act. Such actions serve no legitimate purpose. The end result of such actions is to thwart competition by imposing additional unnecessary costs upon Sprint.

Q. Since the Parties' existing ICAs were originally entered into (between 1999 and 2003), has the competitive environment changed, and if so, how?

A. Yes. AT&T's corporate parent has acquired many of its former competitors and other ILECs in other markets resulting in a reformulated Ma Bell, now with a wireless affiliate. Sprint strives to compete head-to-head with AT&T and its affiliates in every facet of the communications business—wireless and wireline, wholesale and retail carriage — in an industry that is constantly changing. And while technology advancements and innovation, spurred by the positive forces of competition, have made it possible for people to connect with each other using an exciting and ever expanding array of communications tools, some fundamental truths endure:

1) The purpose of the communications industry is to connect people so that they can communicate with each other - without regard to who their "carrier" may be;
2) The communications industry is a network of many separate networks owned and operated by competing service providers;
3) Consumers, businesses, and the overall economy benefit from robust competition in the communications industry;
4) Just, reasonable, technology neutral and nondiscriminatory interconnection is the linchpin to robust competition and remains the law of the land; and
5) Efficient carrier-to-carrier interconnection serves the public interest.

While industry competition is driving promising technology advancements, one major development has significantly shifted the structure of the industry in a way that threatens the cause of competition. It is no secret that the series of consolidations which produced the "new" AT&T has created a powerful force.[1] History provides valuable lessons and it is important to note that the primary cause for the government break-up of the original AT&T was AT&T's refusal to permit reasonable interconnection to would-be rivals. It is clearly evident, and not surprising, that the "new" AT&T understands that its dominant market position can be fortified by dictating rates, terms, and conditions for interconnection with its network, which inflate the costs of its rivals and produce excessive profits for AT&T. Make no

[1] *See, e.g.,* VideoSift, *Colbert regarding the new AT&T* (2007), http://videosift.com/video/Colbert-regarding-the-new-ATT (a lighthearted, yet generally accurate depiction of the split up and recombination of AT&T). Of course, for those companies vying to compete with AT&T and for consumers which benefit from competition, in the absence of just, reasonable, and non-discriminatory interconnection agreements, AT&T's recombination is no laughing matter.

mistake, the "new" AT&T, just like the original AT&T, possesses both the motive and the means to thwart competition.

The current generation of interconnection contracts which the parties operate under today were fought for in a period of time when the former AT&T, not the original AT&T or "new" AT&T, was a major force in the cause of *advancing* competition. Prior to being swallowed up by the Regional Bell Operating Companies ("RBOCs"), the pro-competition AT&T and MCI were potent leaders and allies with Sprint and other competitive carriers in fighting for just, reasonable, and non-discriminatory interconnection with the RBOCs to pry open these monopoly markets to the enablement of competition. The pro-competitive provisions in existing interconnection contracts were obtained during this time period. Competitive rivals fully understood and correctly predicted that with RBOC/AT&T consolidation, the agenda of the "new" AT&T would be to revert to the tradition of the RBOC monopolies and the original AT&T to stifle competition through the imposition of unreasonable and discriminatory interconnection rates, terms, and conditions and to do so in an environment in which the former pro-competition AT&T no longer exists to aid the cause of competition.

AT&T seeks contract provisions which would: 1) undo pro-competitive provisions from the current contract; 2) impose new, costly, unnecessary, burdensome, asymmetric and/or technology-based discriminatory obligations on Sprint without any

Act-compliant underlying rationale; and 3) place restrictions to unduly limit Sprint's network and business plans, ignoring the reality that traffic today does not neatly fit into traditional categories.

An arbitration proceeding such as this one presents an important opportunity for the ICC to ensure that AT&T does not hinder competition in Illinois through unlawful and unreasonable interconnection terms.

Ultimately, the ICC will determine which party's proposed language – indeed, if either party's language - meets the requirements of federal and state law as to any given Issue(s). And, if the ICC were to determine neither party's language complies with federal or state law as to a given Issue(s), sufficient ICC guidance will also be necessary to direct the parties' mutual development and resubmission of appropriate language that conforms to the ICC's rulings as to such Issue(s).

Q. Describe some of the market and industry trends the ICC should consider when deciding the disputed issues in this arbitration.

A. The ICC should consider how the communications market and industry are evolving as it decides the disputed issues in this arbitration. The communications market is nothing like it was nearly 17 years ago when Congress passed the Act. Five very fundamental changes have occurred since the passage of the Act: 1) the ubiquity of the Internet; 2) the proliferation of wireless technology; 3) the evolution of voice

technology from Time Division Multiplex ("TDM") to Internet Protocol ("IP"), 4) the expansion and subsequent contraction of competition and 5) a landmark FCC order that overhauled the underpinnings of the outdated and competition-limiting Intercarrier Compensation ("ICC") system. These fundamental changes have resulted in a massive convergence of voice, data and video services and applications. These developments require a fresh view by the ICC of the relationship between incumbent AT&T and competitor Sprint and of certain past decisions made by the ICC on the disputed issues in this case to ensure that public policy keeps up with the industry changes that I describe.

The ubiquity of the Internet and the resulting IP voice applications: While the predecessor of what we now know as the Internet was around for decades, the Internet as we know it today was just beginning to take off in the 1990s. Now it is available virtually everywhere. Interconnection agreements need to recognize the ubiquity of the Internet and the wide availability of voice applications on the Internet.

The proliferation of wireless technology and associated nation-wide calling plans: The first cell phone conversation took place in 1973 leading to over a million users by 1987 and estimated subscriber connections now amount to over 321 million or 101% of the total U.S. population. This includes 34% of U. S. households that are wireless-only households.[2] The popularity of wireless service clearly demonstrates how

[2] *U.S. Wireless Quick Facts*, CTIA, http://ctia.org/media/industry_info/index.cfm/AID/10323

highly American consumers and businesses value this service. Such popularity has also driven consumer demand for one rate, nation-wide calling plans. This tremendous growth in wireless adoption makes it all the more important that interconnection terms and conditions conform to applicable law

The evolution of voice technology from TDM to IP: The evolution of technology has created a melting pot of services and applications never seen before. Telephones function as computers and computers function as telephones. Devices are multi-faceted and capable of enabling communications via voice, text, email, video, Internet protocol, etc. The manner in which service providers interface their networks and exchange the various forms of communications must adapt to the fact that communication devices are multi-faceted. The market will no longer tolerate segregation based on artificial distinctions and the devices and the network no longer require such segregation, therefore, the interconnection between Sprint and AT&T must reflect today's realities and advance opportunities that will likely occur during the term of the agreement. There are also new players in the market. In the past, voice communications providers were carriers and we recognized who they were. Today, there are dozens of voice service providers that are not considered carriers, don't want to be carriers and don't want to deal with all the hassles of the carrier world. These service providers look to others, such as Sprint, to do the "heavy lifting" required to connect their customers with other voice service users, i.e., wholesale PSTN interconnection. Hence, there is a large wholesale communications market that must

be accommodated. The 20th century walls between wireless and wireline, TDM voice and IP voice, and between retail and wholesale must be removed.

The expansion and subsequent contraction of competition: After the Act passed there was a proliferation of new wireless and wireline competitors including the old AT&T and MCI. However, the last several years has seen a market contraction in the number of wireless and wireline competitors in the marketplace as carriers like AT&T have consolidated a number of the competitors. This has returned AT&T to pre-Act market dominance even as the number and percentage of its retail wireline subscribers has declined. AT&T still controls inputs that are necessary for competition, such as Interconnection Facilities, trunks and special access. In other words, AT&T remains the gatekeeper to the PSTN due to its ubiquitous reach in its incumbent territories like in Illinois. Interconnection is a primary weapon in AT&T's arsenal to constrain competition, raise its competitors' costs and attempt to maximize its own profits. And while specific issues and technology changes, the foundation of telecom policy and the ICC's duty remains the same -- protection of consumers and the promotion of competition. The ICC therefore must decide these arbitration disputes in a manner that promotes efficient, cost-minimizing interconnection. Otherwise, consumers ultimately will bear the costs.

A landmark FCC order that overhauled the underpinnings of the outdated and competition-limiting intercarrier compensation system: In recognition of the need to

eliminate the harmful effects on consumers and competition and to advance the transition to more efficient technology, the FCC issued its landmark CAF Order in November of 2011.[3] That order made fundamental changes to the intercarrier compensation system that affects the underlying Interconnection Facilities at issue in this proceeding as well as confirming a requirement that ILECs enter into good faith negotiations for IP Interconnection. Moreover, the FCC abandoned the previous century's defunct calling-party-network-pays intercarrier compensation model for a competitively neutral bill-and-keep framework that reflects the indisputable fact that a voice call benefits equally both of the interconnecting carriers and both of the interconnecting carriers' customers on the call. Sprint's position with respect to interconnection issues is entirely consistent with this fundamental construct. The facilities used to exchange calls between carriers should be equally borne by both carriers and ultimately their respective customers. Saddling one carrier with Interconnection Facility costs creates the same distortions as saddling one carrier versus another with inflated, asymmetric, per-minute usage charges. For example, the shifting of interconnection costs from one carrier to another results in a subsidy to the carrier shifting its costs allowing it to subsidize its retail prices. Subsidized retail pricing is detrimental to competitive market pricing.

Service providers like Sprint are evolving and modifying their networks to enable them to meet the demands of the marketplace. The days of segregated products are behind

[3] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("CAF Order").

us and so are the days of segregated network platforms. Sprint, like AT&T and other providers, is evaluating and implementing network changes to maximize service capabilities and minimize network costs. These network changes are necessary due to competitive pressures. This evolution in the marketplace and the involved technology has brought Sprint to where it is today in its interconnection request of AT&T. The means by which Sprint interconnects with AT&T must keep up with what is occurring in the market and within Sprint's network. AT&T would like to restrict Sprint's rights as a telecommunications carrier by limiting the terms in this Agreement to those of only a pure wireless service provider. Sprint, on the other hand, views this agreement as broader than just a traditional wireless agreement. It is an agreement between two telecommunications carriers, by definition one is an ILEC and the other is a requesting telecommunications carrier, each with its requisite rights and obligations. The fact that the legal entity entering into the agreement is a wireless carrier does not in some way limit that entity's rights as a requesting telecommunications carrier.

Q. Please summarize your introductory statements.

A. These introductory statements are intended to shed light on the fact that the market and the networks used to serve those markets have changed and will continue to change drastically to meet the ever-expanding communications needs within the United States and Illinois. In summary, Sprint's testimony demonstrates that Sprint's proposed interconnection agreement will ensure just, reasonable, and nondiscriminatory interconnection, in accordance with federal and state law and rules, which will permit

Sprint and AT&T the opportunity to compete fairly in the provision of continuously evolving services to the benefit of Illinois citizens.

Section I. Provisions Related to the Purpose and Scope of the Agreements

Issue 1 (DPL reference I.A.(1)): Should this Agreement preclude the exchange of Information Services traffic; or, require that traffic be exchanged in TDM format? (General Terms & Conditions Sections 3.11.2, 3.11.2.1, and 3.11.2.2)

Issue 11 (DPL reference II.A.(2)): Should terms and conditions regarding IP Interconnection be included in the Agreement? (Attachment 2 Sections 2.1.5.2)

Issue 18 (DPL reference II.B.(4)): How and where will IP POIs be established? (Attachment 2 Sections 2.2.1, 2.2.2)

Q. Describe Issue 1, 11 and 18.

A. These three issues all involve IP Interconnection. Issue 1 has only one remaining area of disagreement, whether Sprint is entitled to interconnect and exchange traffic with AT&T in Internet protocol format, instead of TDM, pursuant to this Section 251 interconnection agreement. I refer to these three Issues jointly as IP Interconnection.

Q. Please describe the disagreement between the parties related to IP Interconnection.

A. Sprint is asking that language be included in the ICA that acknowledges the parties will exchange voice traffic via an IP Interconnection arrangement as opposed to the historically used TDM interconnection. Sprint's position is that IP Interconnection falls under Sections 251 and 252 of the Act and as a result, the ICC has jurisdiction over the issue. In fact, the ICC's rules acknowledge that all technically feasible forms of interconnection are encouraged.[4] Moreover, the rules go further to require that an ILEC may not deny a telecommunications carrier's request to deploy a technology that is presumed acceptable for deployment unless the ILEC proves to the ICC "that deployment of the particular technology is technically infeasible or will significantly degrade the performance of advanced services or traditional voice band service."[5]

AT&T, on the other hand, does not believe IP Interconnection should be included in the ICA because 1) AT&T believes 251(c)(2) of the Act does not apply to IP Interconnection and 2) AT&T claims that at this time it has no IP-capable equipment with which Sprint can interconnect. Another way of describing the differences between Sprint and AT&T is that Sprint believes IP Interconnection is subject to Section 251 and 252 regulation because the parties will continue to be interconnected to exchange voice traffic, but with a different technology – IP instead of TDM. AT&T believes that a change in interconnection technology is not subject to Sections 251 and 252.

[4] 83 IL Admin. Code Part 790.310 (b).
[5] *Id* at 790.310 (f).

Q. Please describe what Sprint is asking of AT&T relative to IP Interconnection.

A. Sprint has included language that makes it clear that IP Interconnection is covered by this Section 251 agreement (Issue 1). In addition, Sprint is asking that when Sprint requests IP Interconnection, Sprint can do so under this Agreement and the parties must proceed in operational discussions that will result in the Parties timely exchanging traffic via an IP Interconnection (Issue 11). Finally, Sprint is proposing language consistent with what it thinks is a reasonable identification of where traffic will be exchanged when using IP Interconnection (Issue 18).

Q. Parties opposed to IP Interconnection obligations often attempt to confuse the issue by suggesting IP Interconnection is akin to regulating the Internet or somehow impacts the Internet, is that true?

A. No. Enforcing ILEC obligations to interconnect via IP rather than TDM has nothing to do with regulation of the Internet and has no impact whatsoever on the Internet. Such "scare tactics" are nothing more than red herring arguments intended to create a distraction from the real issues. IP Interconnection, as Sprint is proposing, is only to be used for the voice traffic the parties are currently exchanging via TDM. It's an updating of the technology used by the parties to exchange traffic that recognizes the natural evolution of technology with the industry generally and by both parties in particular. The voice traffic traveling over an IP Interconnection is not commingled in any way with Internet data traffic and will not utilize the trunks the parties use for Internet traffic. IP Interconnection is not regulation of the Internet.

Q. Is there any correlation between IP Interconnection and the retail regulation of IP-enabled services such as VoIP?

A. No. In contrast to the regulation of retail services provided to end users, IP Interconnection is a technical issue related to how two voice service providers, both carriers in this case, exchange voice traffic. Interconnection is a necessary function that enables both Parties to provide its end users' voice services. Interconnection, whether it is TDM or IP, will enable AT&T and Sprint to exchange voice service traffic. Interconnection is subject to Sections 251 and 252 of the Act. Any retail regulation of IP-enabled services is a separate issue from co-carrier interconnection issues addressed in this agreement.

Q. Why is IP Interconnection important to Sprint?

A. There are multiple reasons why IP Interconnection is important to Sprint. The first reason is based on the highly competitive voice market and Sprint's continued efforts to reduce costs. Efficiently designed IP Interconnection involves fewer points of interconnection and more efficient use of interconnection trunks due to the inherently more efficient Internet protocol. Therefore, IP Interconnection will substantially reduce Sprint's costs as compared to today's TDM Interconnection configuration, enabling Sprint to better compete. Second, the technology used within each Parties' networks is evolving such that more and more of their respective networks are becoming IP-based rather than TDM-based. That being the case, IP Interconnection is

the logical evolutionary step. In fact, many carriers are already exchanging voice traffic in IP format – including AT&T with its affiliate as I explain later. Third, if Sprint is required to convert its voice traffic that is in IP format to TDM before exchanging this traffic with AT&T, Sprint's will be forced to invest in additional network equipment, e.g., media gateways, that would be unnecessary if the traffic remained in IP format.

Q. You stated that Sprint believes IP Interconnection is subject to Section 251 and 252 of the Act. Please explain.

A. The Act went into effect in 1996, nearly 17 years ago. Put most simply, it was written by Congress for the purpose of enabling competition among service providers because it was and is in the public interest. Section 251 of the Act defined rights and obligations of all carriers generally in Section 251(a), local exchange carriers ("LECs") in Section 251(b) and incumbent local exchange carriers ("ILECs") in Section 251(c). These rights and obligations were not intended to be specific to any particular technology because, had they been, the Act could have been rendered obsolete as the result of technological innovation. Given the decades upon decades of technological advancements within the communications industry, the reasonable conclusion is that the Act was written to accommodate technological changes or evolution because the intent of the Act doesn't depend on technology. The goal of the Act is still valid so it is logical to apply the requirements of the Act to the technology that is in use today. In fact, one can argue that since the intent of the Act is to foster

competition and IP technology enables competitors to compete, then it stands to reason that the Act applies as new technologies are developed, in this case IP technology. The technology loophole AT&T is arguing does not hold water.

Q. Is there language in the Act that supports your technology agnostic argument?

A. Yes. The Act uses the term "technically feasible" in Section 251(c)(2)(B) with respect to points of interconnection and in Section 251(c)(3) with respect to access to unbundled elements. The technically feasible standard is used because the law itself is not intended to deal with the details of the technology, but rather to set the standard by which incumbent local exchange carriers are to be held. The Act is intentionally and appropriately technology agnostic.

Q. The Act required the FCC to establish rules necessary to implement Section 251 of the Act. Are the FCC's rules consistent with the technology agnostic foundation provided by the Act?

A. Yes. The ILEC interconnection obligations of Section 251(c) resulted in rules developed by the FCC in 47 C. F. R. §§ 51.301, 51.303 and 51.305, the heart of which are included in § 51.305. The same "technically feasible" standard is upheld by the FCC's rules. Like the Illinois interconnection rules cited above,[6] the FCC rules are not limited to any particular technology. In fact, there are two instances within the rules

[6] 83 IL Admin. Code Part 790.310.

that contemplate other technologies. The first is in 47 C. F. R. § 51.305(a)(2). It states the following:

> § 51.305 Interconnection.
>
> (a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:
> (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
> (2) At any technically feasible point within the incumbent LEC's network including, <u>at a minimum</u>:
> (i) The line-side of a local switch;
> (ii) The trunk-side of a local switch;
> (iii) The trunk interconnection points for a tandem switch;
> (iv) Central office cross-connect points;
> (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
> (vi) The points of access to unbundled network elements as described in § 51.319; (emphasis added)

I have underlined the phrase "at a minimum." While the FCC identified particular points on the ILEC's network that are considered technically feasible for interconnection at that time, the FCC took into account the fact that networks can change so there may be additional points of interconnection that would be technically feasible should a technological change occur, e.g. IP Interconnection.

The second instance is in 47 C. F. R. § 51.305(c) shows that the FCC's rules are intended to be technically agnostic and intended to accommodate changes in technology. The rule states:

> § 51.305 Interconnection.

> (c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities. (emphasis added)

This rule means that if an ILEC has interconnected in a particular manner, then it is considered a technically feasible form of interconnection. The phrase I have underlined "Adherence to the same interface or protocol standards" means that the FCC recognized that there could be multiple protocol standards that are technically feasible. This supports my previous statement that the Act and the FCC's rules are written to support the evolution of network technology.

Q. Is there anything in the Act or the FCC's rules governing interconnection with an ILEC that suggests it is limited to TDM Interconnection?

A. No. I have shown how the Act, subsequent FCC rules and Illinois rules supports Sprint's position that interconnection is technically agnostic. If one looks at it from AT&T's perspective that the Act specifically does not apply to IP Interconnection, one would have to find a definitive statement in the Act or the rules supporting AT&T's claim. Lacking such a specific statement denying IP Interconnection the more logical, reasonable and consistent interpretation based on the Act's intent is to conclude IP Interconnection is included, rather than excluded. I used the term loophole before because I think it is exactly what AT&T is attempting to suggest, i.e., that there is some loophole regarding the use of the Internet protocol for interconnection such that

it is excluded – regardless of the overarching and clear inherent intent of the Act to accommodate and foster competition including through beneficial changes in technology.

Q. Is there precedent that supports Sprint's position that IP Interconnection is consistent with the Act and subsequent FCC rules?

A. Yes. On September 25, 2012, the Puerto Rico Telecommunications Regulatory Board ("Board") in Docket No. JRT-2012-AR-0001 approved an order in the Section 251 arbitration between Liberty Cablevision of Puerto Rico, LLC ("Liberty") and Puerto Rico Telephone Company, Inc. ("PRTC") in which PRTC argued that the Board cannot enforce IP-to-IP interconnection. On page 14 of its Order, after making several references to the FCC's CAF Order, the Board determined that "Liberty's request for a means to drive IP-to-IP interconnection negotiations to conclusion is consistent with the FCC's perspective." The Board concluded that PRTC's position would leave Liberty without a means to actually implement IP Interconnection which was inconsistent with the FCC's endorsement of the transition to all-IP networks. The Board's Order less appendices is attached as Exhibit JRB-1.3.

Q. What was the Board's reasoning for asserting jurisdiction over IP Interconnection in a Section 251/252 arbitration?

A. On page 14 and 15 of its order, the Board reasoned that 1) Congress intended for the states to maintain a role in Section 251 arbitrations, 2) the PRTC could not show that

the FCC has precluded state agencies from addressing IP Interconnection and 3) PRTC could not show that Liberty's request conflicted with Section 251 or any federal law. In addition, on page 15 the Board concluded by stating, "Liberty's request is reasonable, not prohibited by federal law, consistent with the FCC's guidance regarding promotion of IP broadband networks, and consistent with the Board's duty to promote competition, investment, and interconnection in Puerto Rico."

Q. The Board made reference to the FCC's CAF Order by stating that the FCC intended for IP networks to continue to grow and reasoned that this also meant IP Interconnection negotiation should take place and subsequent agreements be reached. Provide examples from the FCC's CAF Order that is consistent with the Board's reasoning and Sprint's position on IP Interconnection.

A. I don't believe there is any dispute that the FCC is encouraging a transition to IP networks. The FCC's most pointed statements addressing IP Interconnection are found in paragraphs 652 and 1011. The FCC stated:

> ¶ 652 "… We also make clear our expectation that carriers will negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic."
>
> ¶ 1011.In particular, even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. <u>The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise. Moreover, we expect such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic.</u> As we evaluate specific elements of the appropriate interconnection policy framework for voice IP-to-IP interconnection in our FNPRM, we will

be monitoring marketplace developments, which will inform the Commission's actions in response to the FNPRM. (emphasis added)

Q. You underlined two sentences in paragraph 1011, please explain why they are significant.

A. The first sentence makes it 100% clear that good-faith negotiations under Section 251 are not limited to TDM technology as suggested by AT&T. The FCC's words are clear, "The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise."

The second sentence makes it clear the FCC expects carriers to enter into Section 251 and 252 agreements that enable the exchange of voice traffic via IP Interconnection.[7] This is an important statement because it is made in spite of the FCC's Further Notice of Proposed Rulemaking on IP interconnection issued at the time of the CAF Order. It is also important because carriers, like AT&T, argue that IP Interconnection is not presently required because the FCC has issued its Further Notice.

Q. In the FCC's discussion on IP Interconnection in the FCC order or its Further Notice on IP Interconnection, did the FCC ever state that state commissions were barred or preempted from addressing the issue?

[7] 47 C. F. R. § 51.301 requires incumbent LECs to negotiate in good faith the terms and conditions of agreements to fulfill the duties established by Sections 251(b) and (c) of the Act.

A. No. Not once did the FCC bar or preempt state commissions from addressing the issue of IP Interconnection under Section 251. The role of the states is clear in the Act and given the FCC's requirement that IP Interconnection negotiations take place and that there be agreements as a result of these good-faith negotiations, it only stands to reason that state commissions continue fulfilling their responsibilities under Section 252, including the resolution of disputed issues via an arbitration such as this proceeding and any subsequent disputes via the dispute resolution process.

Q. In addition to the Puerto Rico TRB, has any other state commission addressed IP Interconnection?

A. Yes. The Public Utilities Commission of Ohio issued an order on October 31, 2012 in Case No. 12-922-TP-ORD in which it adopted rules that make it clear that interconnection obligation apply regardless of the technology used for interconnection. In spite of arguments by AT&T, Cincinnati Bell, and the Ohio Telephone Association that the PUC staff proposed rules go beyond the federal statutory authority, the PUC adopted rules supportive of IP Interconnection. I have attached the order as Exhibit JRB-1.4 The discussion by the PUC is found on pages 4-6 of the order and the relevant rules are in Chapter 4901:1-7-06 as found on page 9 of Attachment A to the order.

Q. Why is now the time to address the issue of IP Interconnection?

A. It is important that the issue of IP Interconnection be addressed now by the ICC because:

1) Sprint has the right to ask for any technically feasible form of interconnection at any time;

2) the ICC is compelled to address a requesting carrier's arbitration issues. Sprint is seeking language addressing IP Interconnection pursuant to its right to do so under Section 251 negotiations and lacking agreement between Sprint and AT&T, it's the ICC's responsibility under Section 252 to arbitrate the dispute between Sprint and AT&T; and,

3) without question, voice service provider networks are evolving to IP technology and the Parties' networks are following this general trend making it appropriate for this replacement ICA (which will be in place for a minimum of three years) to address IP Interconnection.

Q. Briefly describe where the industry is with respect to the use of IP.

A. It is a well-known fact that networks are migrating from TDM based technologies to IP based technologies. It only stands to reason that carriers begin to exchange traffic in IP format. Migration from TDM to IP has been occurring over the last decade. The first FCC case I am aware of addressing IP was prompted by AT&T itself, although it was AT&T's IXC/CLEC entity rather than the AT&T ILEC in these proceedings. That entity filed a petition in 2002 asking the FCC to determine whether access

charges applied to what became known as "IP in the middle."[8] That entity had deployed IP technology within its core network a decade ago.

Another well-known case is one in which Vonage sought clarification for its over-the-top VoIP. Vonage's petition, filed in 2003, was a VoIP application in which IP technology was utilized at the customer premise.[9]

There have been numerous VoIP cases since the IP in the middle and Vonage cases and they all illustrate the steady and obvious evolution of service provider networks to IP technology. It's a natural evolution similar to what has occurred multiple times in the past in the telecommunications industry. AT&T itself recognizes this transition is taking place and has urged the FCC to set a date as to when the "PSTN" should be shut down and replaced with an all IP network.[10] More recently, AT&T filed a petition with the FCC asking it to begin a proceeding concerning the TDM-to-IP transition and suggesting the sunset of retail and wholesale regulation as we know it.[11] Taking AT&T's Petition to its logical conclusion would leave Sprint in a position of having to negotiate IP Interconnection on commercial terms with no regulatory backstop, rather

[8] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd. 7457, (2004).
[9] *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd. 22404, (2004).
[10] In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, A National Broadband Plan for Our Future and Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 09-47, 09-51 and 09-137, Comments – NBP Public Notice #25, Comments of AT&T Inc. on the Transition from the Legacy Circuit-Switched Network to Broadband, December 21, 2009, page 14-16.
[11] In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, November 7, 2012. Exhibit JRB-1.5.

than with the Sections 251 and 252 competition protections that the Act and state commissions afford.

The significance of this evolution is important to Sprint because its network is evolving as well. Sprint has utilized IP technology to provide voice services since 2004 when it entered into its first wholesale arrangement with a cable company and it continues to deploy IP technology throughout its network.

Q. **If Sprint is not allowed to interconnect with AT&T in IP format, but is instead restricted to utilizing TDM format as AT&T is arguing, will Sprint have to convert its IP formatted traffic to TDM traffic before interconnecting with AT&T?**

A. Yes. As I stated, Sprint continues to evolve its network to IP. If it is not allowed to interconnect with AT&T in IP, then it will be required to continue to convert traffic Sprint exchanges with AT&T from IP to TDM and vice versa. Such conversion is inefficient and adds to Sprint's network costs.

Q. Does AT&T utilize IP in its network today?

A. Yes. While I do not know the entire extent to which AT&T is using IP within its network, it is clear it is. I mentioned previously that the "old" AT&T was using IP in its backbone a decade ago. I can't imagine it has stopped. In addition, on November 7, 2012, AT&T announced its plan to invest $14 Billion to expand its wireless and

wireline broadband networks including the expansion of its U-verse service which includes VoIP. AT&T's press release is Exhibit JRB-1.6. Finally, AT&T stated that it is providing VoIP to its retail end-users in response to Sprint's Data Requests AT&T-1 through 6.

Q. Summarize how AT&T is providing VoIP to its end-users.

A. AT&T's response to Sprint Data Request 4, Exhibit JRB-1.7, illustrates how AT&T is providing VoIP to its end-users. Generally, AT&T (the ILEC) and AT&T Corp (an ILEC affiliate) have deployed the necessary equipment and facilities to enable AT&T's end-users to subscribe to VoIP as part of AT&T's U-verse service and to interconnect with the PSTN. AT&T has deployed the customer premises and outside plant facilities and equipment. AT&T Corp has deployed the equipment that receives the IP data stream from AT&T and converts the VoIP to TDM for interconnection back to the PSTN at AT&T's tandems. In other words, AT&T provides the end-user VoIP service and the PSTN interconnection, but AT&T Corp provides the protocol conversion in the middle.

Q. Does AT&T interconnect with AT&T Corp using IP?

A. Yes. The diagram referenced above shows that the interconnection between AT&T and AT&T Corp as IP. Clearly AT&T delivers its VoIP traffic to AT&T Corp via an IP data stream. Therefore, AT&T provides itself IP Interconnection.

Q. As part of AT&T's basis for not providing IP Interconnection to Sprint, it states in the DPL that AT&T has no IP-capable equipment with which Sprint can interconnect. How do you interpret this statement?

A. When AT&T states that it does not have IP-capable equipment with which Sprint can interconnect, I believe it is saying that even though AT&T has an IP Interconnection (albeit with AT&T Corp), it can't be used for IP Interconnection with Sprint. Sprint does not fully understand what AT&T means when it says it has "no IP-capable equipment with which Sprint can interconnect" when AT&T concedes it is interconnected with AT&T Corp via IP.

Q. Isn't it discriminatory on the part of AT&T the ILEC to provide IP Interconnection to its affiliate, but not be willing to provide IP Interconnection to Sprint?

A. Yes. While I am not an attorney, 47 C. F. R. § 51.305(a)(4) covers the situation I just described. AT&T the ILEC is not allowed to discriminate by interconnecting with an affiliate on an IP basis, yet refusing to do so with Sprint. AT&T's IP Interconnection with AT&T Corp is evidence that IP Interconnection with AT&T is technically feasible.

Q. It appears that AT&T the ILEC is attempting to shield itself from having to provide IP Interconnection to Sprint even though it provides IP Interconnection to its affiliate AT&T Corp, would you agree?

A. Yes. AT&T's corporate position on IP is clear based on the petition it filed with the FCC. It is already providing IP services and migrating to an all-IP network and once that has occurred, it believes it should not be regulated at the retail or carrier-to-carrier level, i.e., no Section 251 IP Interconnection obligations. This would allow AT&T, with no regulatory backstop, to charge "commercial rates," or not provide IP Interconnection at all, to any carrier that wants to exchange traffic with it. The ICC should not allow AT&T to shield itself from Section 251 obligations by having AT&T Corp perform certain functions and/or hold certain assets.

Q. Do you believe Sprint or any other competitor of AT&T could negotiate reasonable commercial terms for IP Interconnection without the protections provided under Section 251 and 252?

A. No. The last 16 years since the Act was passed has shown that competitors seeking interconnection with ILECs need a regulatory backstop to level the playing field. Without the regulatory oversight provided by Section 251 and 252, interconnecting carriers would be left to negotiating on commercial terms which, in the instant case, would likely take the form of AT&T trying to sell a service to Sprint rather than being required to treat Sprint as an interconnecting co-carrier. In the case where AT&T has significantly more market power due to the advantages of being an incumbent, it is necessary to have a regulatory backstop such as the ICC so AT&T cannot impose additional costs on competitors and competition.

Q. Is interconnection a service the ILEC sells a requesting carrier?

A. No. Consistent with what the FCC determined in its CAF Order with respect to intercarrier compensation, interconnection is mutually beneficial to both parties and both parties' customers. Neither party should be able to leverage its position against the other. Sprint's customers make calls to AT&T customers and vice versa. Both customer bases benefit when the carriers efficiently and cost-effectively interconnect with each other and complete calls. Sprint and AT&T are co-carriers.

Q. Is Sprint capable of implementing IP Interconnection?

A. Yes. Sprint is capable of implementing IP Interconnection with a willing and cooperative party.

Q. Issue 11 says that Sprint and AT&T will enter into "operational discussions to establish IP Interconnection in an expeditious manner." Why is Sprint comfortable with the concept of working out the details later?

A. Sprint is comfortable with working out the details of an IP Interconnection later because it feels the primary challenge is gaining the right to establish IP Interconnection and wants to focus on that fundamental issue in this arbitration. If AT&T is required to interconnect with Sprint via IP, Sprint knows it is possible to work out the details because it has done so before with other parties. Additionally, under Sprint's proposed language, if the parties end up at an impasse, the dispute resolution process under the Commission approved ICA is available. That being said,

Sprint does believe there is one operational detail that should be addressed by the ICC. Issue 18 addresses this detail - How and where will IP POIs be established?

Q. Why is it important for the ICC to address how and where IP POIs will be established?

A. It is important that the ICC address how and where IP POIs will be established because it is one of fundamental benefits provided by IP Interconnection. Sprint believes when IP Interconnection is established between Sprint and AT&T, it can exchange traffic at a single POI located in the same physical location as where Sprint and AT&T exchange IP data traffic, at an Internet exchange point. In addition to the location of the IP POI, Sprint's position is that the parties would be responsible for getting voice traffic from their respective networks to the IP POI. In fact, Sprint's position is that an IP Interconnection can be utilized for the exchange of regional traffic, e.g., traffic in and between multiple states. That said, if the parties agree to exchange traffic at someplace other than where they exchange IP data traffic that is acceptable to Sprint. Sprint's intent with identifying the POI or POIs for IP Interconnection is to let the engineers decide the best place rather than the accountants and attorneys. The engineers have done a pretty good job of designing the Internet connection points, therefore we should now let them design an efficient voice interconnection network.

Issue 2 (DPL reference I.A(2)): Can Sprint use the Agreement to exchange its third-party wholesale-customer PSTN traffic when such third party wholesale

customer has obtained its own NPA-NXXs? (GT&C's Section 3.11.4; Attachment 2 Sections 3.1.1, 3.1.2, 3.1.3)

Q Please describe Issue 2.

A. Sprint believes this issue has been resolved except for when Sprint Third Party Provider wants to utilize its own telephone numbers. The parties agree on the language in 3.11.4 except for Sprint's last sentence that says Sprint will inform AT&T when its Third Party Provider wholesale customer wants to use its own telephone numbers. Additionally, the parties also agree on language in 3.11.2.1 and 3.11.2.1.1 that the agreement is limited to the exchange of CMRS traffic (3.11.2.1) until such time as Sprint contacts AT&T and the parties affirmatively address non-CMRS traffic (3.11.2.1.1). If, notwithstanding the parties agreement on 3.11.2.1 and 3.11.2.1.1, it is not a mere oversight that AT&T's remaining Attachment 2, 3.1.1 and 3.1.2 language has not been withdrawn by AT&T, then the disagreement between Sprint and AT&T stretches beyond what is stated in the issue statement. AT&T's Attachment 2, 3.1.1 and 3.1.2 are inconsistent with what the parties agreed to in 3.11.4. This is apparent from AT&T's own position statement on Issue 2 in that AT&T did not want Sprint exchanging both wireless and wireline traffic with AT&T "because AT&T cannot distinguish wireline from wireless traffic to assess the appropriate compensation." In recognition of AT&T's concerns, the parties entered into the 3.11.2.1.1 language. Based on the forgoing, my testimony presumes the parties have resolved Issue 2 with the exception of when Sprint's Third Party Provider wholesale customers utilize their

own telephone numbers. If this is incorrect and AT&T pre-filed testimony seeks to retain Attachment 2, 3.1.1 and 3.1.2, then I will address AT&T's position in my Verified Supplemental Statement.

Q. Please state Sprint's position with respect to Issue 2.

A. Sprint's position with respect to Issue 2 is that Sprint has the right to provide what it calls wholesale interconnection services whether the Sprint's wholesale interconnection service customer utilizes Sprint's telephone numbers or obtains its own telephone numbers.

Q. How does the FCC define or describe wholesale services?

A. The FCC defines wholesale transaction as "a service or product as an input to a further sale to an end user, in contrast to a retail transaction for the customer's own personal use or consumption."[12] As a wholesale provider, Sprint would have a contractual relationship with other service providers that provide retail service to their end users. In this situation, Sprint would, among other things, provide for the exchange of traffic between AT&T's end-users and the end-users of the Sprint's wholesale customer over the interconnection trunks established through this Agreement.

Q. What establishes Sprint's right to provide wholesale services?

[12] *Time Warner Cable request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd. 3513, 3517 n.19 (2007).

A. A thorough examination of a carrier's wholesale rights was performed as a result of a petition for declaratory ruling filed by Time Warner Cable.[13] To use the FCC's own words from its Memorandum Opinion and Order ("the TWC Order"), "wholesale providers of telecommunications services are telecommunications carriers for the purposes of sections 251(a) and (b) of the Act, and are entitled to the rights of telecommunications carriers under that provision."[14]

Q. Did the TWC Order address how states were to decide a carrier's wholesale rights?

A. Yes. The TWC Order went on to say, "We conclude that state commission decisions denying wholesale telecommunications service providers the right to interconnect with incumbent LECs pursuant to sections 251(a) and (b) of the Act are inconsistent with the Act and Commission precedent and would frustrate the development of competition and broadband deployment."[15] The FCC recognized that two states, Nebraska and South Carolina, had rendered decisions inconsistent with the FCC's findings.[16]

Q. Did the FCC make reference to states that rendered decisions that were consistent with the FCC's findings in the TWC Order and are there other states and courts that have concluded that telecommunications carriers have wholesale rights?

[13] *Id*. at 3513, para. 1.
[14] *Id*.
[15] *Id*.
[16] *Id*. at 3515-16, para. 5-6.

A. Yes. The FCC cited several states that had rendered decisions consistent with the FCC's. These states included Illinois, Iowa, New York and Ohio. Additional states include: Michigan, New Hampshire, North Carolina, Pennsylvania, Texas, Vermont, and Washington.[17]

Q. Has the FCC recently reaffirmed its findings in the TWC Order?

A. Yes. The FCC recently reaffirmed the findings in the TWC Order. The FCC stated the following in a declaratory ruling released on May 26, 2011:

[17] *Id*. At 3517 n. 19 (citing *Cambridge Telephone Company, et al*, Order, Docket No. 05-0259, *et al*, 2005 WL 1863370 (Ill. CC, July 15, 2005); *Sprint Comm. Co LP v ACE Comm. Group, et al*, Order on Rehearing, Docket No. ARB-05-2, 2005 WL 3624405 (Iowa Util. Bd., Nov 28, 2005) ("*Sprint Iowa Order*") aff'd *Iowa Telecomms. Servs., Inc. v. Iowa Utils. Bd*., 563 F.3d 743 (8th Cir. 2009); *In the Matter of the Petition of Communications Corporation of Michigan, d/b/a TDS Telecom, for Sections 251/252 arbitration of interconnection rates, terms and conditions with Comcast Phone of Michigan, d/b/a Comcast Digital Phone*, Order, Case No. U-15725, U-15730 (Mich. PSC, March 5, 2009) ("Comcast-TDS Michigan Decision"), *aff'g In the Matter of the Petition of Communications Corporation of Michigan, d/b/a TDS Telecom, for Sections 251/252 Arbitration of Interconnection Rates, Terms and Conditions with Comcast Phone of Michigan, d/b/a Comcast Digital Phone*, Decision of the Arbitrator, Case No. U-15725, U-15730 (Mich. PSC, Jan. 28, 2009); *Sprint Comm. Co. LP v. Nebraska Pub. Serv. Co*., Case No. 4:05CV3260, 2007 WL 2682181 (D. Neb., Sept. 7, 2007), *rev'g Re Sprint Comm. Co LP*, Opinion and Findings, Appl. No. C-3429, 2005 WL 3824447 (Neb PSC, Sept. 13, 2005); *Comcast Phone of New Hampshire d/b/a Comcast Digital Phone Petition for Arbitration of Rates, Terms and Conditions of Interconnection with TDS*, DT 08-162, Order No. 25,005 (N.H. P.U.C. Aug. 13, 2009); *Berkshire Tel Corp v. Sprint*, Case No: 05-CV-6502, 2006 WL 3095665 (WDNY, Oct. 30, 2006), *aff'g Sprint Comm. Co. LP*, Order Resolving Arbitration Issues, Cases 05-C-0170, -0183 (NY PSC, May 24, 2005) *and* Order Denying Rehearing, Cases 05-C-0170, -0183 (NY PSC, Aug 24, 2005); *Sprint Communications Company, L.P*., Order Ruling on Objections and Requiring the Filing of a Composite Agreement, Docket No. P-294, Sub 30 (N. Carolina Utilities Comm'n Dec. 31, 2008), 2008 WL 5456090 (N.C.U.C.), *adopting in relevant part Sprint Communications Company, L.P*., Recommended Arbitration Order, Docket No. P-294, Sub 30 (N. Carolina Utilities Comm'n August 29, 2008) 2008 WL 4123656 (N.C.U.C.)); *Re The Champaign Tel Co*, Case No. 04-1494-TP-UNC, *et al* (Ohio PUC, Apr. 13, 2005); *Sprint Comm. Co LP*, Order, App No. 310183F0002AMA, *et al*, 101 PaPUC 895, 2006 WL 3675279 (Pa PUC, Nov. 30, 2006); *Consolidated Comm. Of Fort Bend Co v Public Utility Commission of Texas*, Memorandum Opinion and Order, 497 F. Supp 2d 836 (W.D. Tex 2007), *aff'g Petition of Sprint Comm. Co LP*, Order, Docket No. 32582, 2006 WL 2366391 (Tex. PUC, Aug 14, 2006) ("*Sprint Texas PUC Order*"); *Petitions of Vermont Telephone Company, Inc. and Comcast Phone of Vermont, LLC d/b/a Comcast Digital Phone, for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecommunications Act of 1996, and Applicable State Laws*, Final Order, Docket No. 7469 (Vt. PSB, Feb. 2, 2009); *Re Sprint Comm. Co. LP*, Order No. 4, Docket UT-073031, 2008 WL 227939 (WUTC, Jan. 24, 2008) ("*Sprint Washington Order*").

> We also reaffirm the Bureau's conclusion in the *TWC Order* that the Act does not differentiate between the provision of telecommunications services on a wholesale or retail basis for the purposes of sections 251(a) and (b), as well as that Order's holding that providers of wholesale telecommunications services enjoy the same rights as any other "telecommunications carrier" under those provisions of the Act. The definition of "telecommunications services" in the Act does not specify whether those services are "retail" or "wholesale," but merely specifies that telecommunications" be offered for a fee "directly to the public, or to such classes of users as to be effectively available directly to the public." As was more fully explained by the Bureau in the *TWC Order,* the definition of "telecommunications services" has long been held to include both retail and wholesale services under Commission precedent. We reaffirm the Bureau's finding that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to sections 251(a) and (b) when providing telecommunication service to other service providers…"[18] (footnotes omitted)

Q. The orders cited all reflect decisions where the requesting carrier was a CLEC, does a CLEC have wholesale rights that other carriers don't have?

A. No. There is no federal CLEC-specific designation or authority to provide wholesale services. The FCC determinations have concluded that telecommunications carriers (rather than just CLECs) have the right to provide wholesale services and interconnect pursuant to sections 251.

Q. Please explain the precedent the FCC was referring to in the two orders you cited.

A. The FCC cited the definition of telecommunications services at 47 U.S. C. § 153(46). A telecommunications carrier is any provider of telecommunications service which are

[18] In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, WC Docket No. 10-143; A National Broadband Plan for Our Future, GN Docket No. 09-51; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, FCC 11-83, Declaratory Ruling, Released May 26, 201. Para. 26.

telecommunications offered for a fee directly to the public or to such classes of users as to be effectively available directly to the public regardless of the facilities used. The terminology "effectively available directly to the public" means wholesale in the same manner as I previously stated in my Verified Statement, "a service or product as an input to a further sale to an end user."

Q. Please summarize your position with respect to Sprint's wholesale rights irrespective of whose telephone numbers are used.

A. It is Sprint's position that all telecommunications carriers have the right to provide wholesale services. Sprint's position is consistent with FCC and state precedent, including the state of Illinois. Sprint's position is also consistent with sound telecommunications policy in that it fosters competition which is a fundamental principle behind the Act generally and Section 251 in particular.

Q. How does wholesale interconnection foster competition?

A. Wholesale interconnection fosters competition by permitting providers alternative means to interconnect with the PSTN. I can think of two examples. The first is where a non-carrier VoIP service provider (Vonage) needs to exchange voice traffic with the PSTN. Non-carrier VoIP service providers do not have 251 interconnection rights so they can gain PSTN interconnection through a wholesale arrangement with a carrier that does have 251 interconnection rights. The second situation is where a carrier that has 251 interconnection rights, but for cost reasons can't afford or can't justify the

expense of establishing PSTN interconnection or because of speed to market reasons, can't delay market entry while PSTN interconnection is established.

Q. Please describe a situation in which a carrier such as Sprint might provide wholesale interconnection services to another service provider and that service provider might have its own telephone numbers.

A. I will provide two examples when a service provider, wishing to utilize Sprint as a wholesale provider of interconnection, could obtain its own telephone numbers from NANPA.

The first example could involve a VoIP service provider that sought and received from the FCC a waiver of 47 C.F.R. § 52.15(g)(2)(i). This rule requires that an applicant for numbering resources be authorized to provide service in the area for which it is seeking numbering resources. In such a case, the VoIP service provider may have its own numbering resources but is not deemed to be a "telecommunications carrier" with a right to interconnect in its own right, as a telecommunications carrier otherwise can. The VoIP service provider would seek to gain PSTN interconnection via a wholesale interconnection provider such as Sprint. In fact, an affiliate of Southwestern Bell (now AT&T) called SBC IP Communications, Inc. sought and received such a waiver from the FCC in 2005. [19]

[19] *In the Matter of Administration of the North American Numbering Plan*, Order, CC Docket 99-200, Released February 1, 2005, 20 FCC Rcd 2957.

It is important to note that as recently as May 21, 2012, AT&T supported the right of non-carriers getting access to telephone numbers.[20] I have provided a copy of the May 21, 2012 ex parte filed by AT&T as Exhibit JRB-1.8.

The second example could involve another CMRS provider or reseller of Sprint's wireless service that has acquired its own telephone numbers, but for whatever reason wishes to utilize a wholesale interconnection provider such as Sprint.

Q. Is Sprint asking to do anything that AT&T itself isn't already doing and will be doing under this Agreement?

A. No. AT&T states in its response to Sprint-ATT-1 that it has wholesale customers for whom AT&T will send such traffic to Sprint. Certainly this traffic will be sent to Sprint over the Interconnection Facilities subject to this proceeding. Some of the traffic delivered by AT&T to Sprint will have been originated by other carriers or non-carrier service providers that have their own telephone numbers. As I understand the SBC IP Communications, Inc. numbering request, SBC IP (now an AT&T affiliate) intended to utilize Southwestern Bell (now AT&T) for PSTN Interconnection.

Q. You mentioned above that AT&T supports non-carrier access to telephone numbers consistent with your first example above. What reason does AT&T give in its FCC ex parte to support non-carrier's obtaining telephone numbers?

[20] See AT&T FCC ex parte at http://apps.fcc.gov/ecfs/document/view?id=7021919441

A. AT&T supports non-carrier obtaining telephone numbers because it believes it is consistent with the FCC's desire to promote IP Interconnection. It recognizes that VoIP providers, although not carriers in some instances, have a need to interconnect with the PSTN via a carrier like AT&T. Sprint believes it is as entitled, as is AT&T, to provide wholesale PSTN interconnection to third parties that may obtain their own telephone numbers.

Q. Is the position AT&T takes with respect to non-carrier access to telephone numbers inconsistent with positions AT&T is taking in this arbitration?

A. Yes. The ex parte AT&T filed at the FCC is inconsistent with the position AT&T is taking in this arbitration with respect to Issue 2. One rational explanation for this is that AT&T is supporting non-carrier access to telephone numbers because it believes it can sell an interconnection service to such service providers, yet at the same time, it refuses to allow Sprint to provide its third-party wholesale-customer service that have their own telephone numbers. It has no problem forming such a relationship with non-carrier providers that have their own telephone numbers and sending their traffic to Sprint over the Sprint/AT&T interconnection, but it will not agree to allow Sprint to form the same relationship and send such customer's traffic to AT&T. The Interconnection Facilities between Sprint and AT&T are for the parties' mutual use and should only be limited by what a party is prohibited from doing by applicable law.

Q. When acting in the capacity of a wholesale provider, will Sprint be responsible for intercarrier compensation?

A. Yes. When Sprint acts in the capacity of a wholesale provider, it will be responsible for all intercarrier compensation, whether due to or from AT&T. Put another way, Sprint is responsible for all intercarrier compensation for traffic originated and terminated to Sprint's wholesale customer's end users.

Q. Is there any reasonable basis for AT&T attempting to restrict Sprint's wholesale rights?

A. No. I do not believe there is any reasonable basis for AT&T attempting to restrict Sprint's wholesale rights.

Q. Are you aware of any regulatory restrictions concerning wholesale Interconnection services that only allow the use of the wholesale carrier's telephone numbers?

A. No. I am not aware of any regulatory restrictions that limit Sprint's rights as a provider of wholesale Interconnection services in this manner. In fact, quite the opposite is true. The overarching goal of the Act was to foster competition. This congressional goal is supported by the development and deployment of creative business models some of which have been seen and others that are yet to be seen.

Q. How should the ICC resolve this issue?

A. Sprint asks the ICC to recognize to the fullest extent Sprint's rights as a carrier to provide wholesale services and adopt Sprint's proposed language for section 3.11.4 as follows:

> 3.11.4 This Agreement may be used by Sprint to exchange traffic associated with jointly provided Authorized Services to a subscriber through Sprint wholesale arrangements with third-party providers that use numbering resources acquired by Sprint from NANPA or the Number Pooling Administrator ("Sprint Third Party Provider(s)"). Subscriber traffic of a Sprint Third Party Provider ("Sprint Third Party Provider Traffic") is not Transit Service traffic under this Agreement. Sprint Third Party Provider Traffic traversing the Parties' respective networks shall be deemed to be and treated under this Agreement (a) as Sprint traffic when it originates with a Sprint Third Party Provider subscriber and either (i) terminates upon the AT&T ILLINOIS network or (ii) is transited by the AT&T ILLINOIS network to a Third Party, and (b) as AT&T ILLINOIS traffic when it originates upon AT&T ILLINOIS' network and is delivered to Sprint's network for termination. ***Although not anticipated at this time, if Sprint provides wholesale services to a Sprint Third Party Provider that does not include Sprint providing the NPA-NXX that is assigned to the subscriber, Sprint will notify AT&T ILLINOIS in writing of any Third Party Provider NPA-NXX number blocks that are part of such wholesale arrangement.***

Section II. How the Parties Interconnect

Issue 13 (II.A. (3)): Should this Agreement include provisions regarding indirect interconnection? (GT&C Section 2.59 and Attachment 2, Section 1.1)

Q. Please describe Issue 13.

A. The current disagreement between Sprint and AT&T on Issue 13 is whether a reference to 47 C. F. R. Part 20.3 rules should be included in the ICA along with a reference to 47 C. F. R. Part 51 rules. Sprint's position is that if the Agreement is going to refer to either set of rules, the Agreement should refer to both sets for the sake of completeness. As a CMRS provider, Section 20.3 of the Part 20 rules and Section 51.5 of the Part 51 rules are equally applicable to the interconnection arrangement between Sprint and AT&T.

Q. What is the essence of this disagreement?

A. AT&T claims that it is improper to refer to Part 20 rules in a Section 251 interconnection agreement. Sprint disagrees. Section 20.11(c) itself states that "Local exchange carriers and commercial mobile radio service providers shall also comply with applicable provisions of part 51 of this chapter." It is clear from this language that the part 20 rules and the part 51 rules are both applicable in the case of a CMRS Provider/ILEC interconnection agreement.

Q. What is the other issue surrounding "Interconnection" and "interconnection?"

A. AT&T proposes to use both "Interconnection" and "interconnection" as defined terms. Sprint does not see a need for "interconnection" and believes that defining "interconnection" creates unnecessary ambiguity into the contract. With respect to AT&T contention that the facilities that carry 911 and "Equal Access" traffic are not

subject to TELRIC pricing, Sprint disagrees. This is an Interconnection Facilities use issue covered by Sprint witness Mark Felton.

Section VI. Billing and Payment Issues

Issue 50 (VI.A (1)): Should the definition of "Cash Deposit and "Letter of Credit" be Party neutral? (GT&C Sections 2.20, 2.67)

Q. Please describe Issue 50.

A. First, Sprint's definition of "Cash Deposit" recognizes the fact that either party may render a bill to the other and, therefore, may need to secure the account with a security deposit. Second, Sprint's definition of "Letter of Credit" also recognizes that either party may render a bill to the other and, therefore, may need to secure the account with a letter of credit. Conversely, AT&T believes that these requirements only apply to the Party requesting interconnection, and therefore that only AT&T is entitled to secure its accounts receivable against non-payment.

Q. Should the ICA remain "party-neutral" on this issue?

A. Yes, the ICA is a bi-lateral agreement and both parties should be treated equally with regard to "Cash Deposit(s)" and "Letter(s) of Credit".

Q. What language does Sprint propose to resolve the "Cash Deposit" portion of this issue?

A. Sprint proposes the following language:

"Cash Deposit" means a cash security deposit in U.S. dollars held by a Party.

Q. What language does Sprint propose to resolve the "Letter of Credit" portion of this issue?

A. Sprint proposes the following language:

"Letter of Credit" means the unconditional, irrevocable standby bank letter of credit from a financial institution applicable to a Party naming such Party and/or its applicable designated affiliate as the beneficiary (ies) thereof.

Issue 51 (VI.A (2)): What assurance of payment language should be included in the Agreement? (GT&C Sprint Sections 9.1 through 9.7 AT&T Sections 9.0 through 9.14)

Q. Please describe Issue 51.

A. Sprint's assurance of payment language provides a legitimate balance and restraint between a Billing Party's reasonable request for payment assurance, and a Billing Party's use of a payment assurance demand as a competitive weapon to needlessly

encumber a Billed Party's capital. On the other hand, AT&T's payment assurance language would enable AT&T to utilize the payment assurance process to gain a competitive advantage against Sprint. In addition, Sprint's proposed language recognizes the existence of mutual billing between the Parties, and therefore requires mutuality in the deposit/payment assurance provision.

Q. Why is AT&T's proposed language unreasonable?

A. First, AT&T's language is unreasonable because it allows only AT&T to invoke payment assurance measures in a "one-sided" manner, while not allowing for Sprint to take the necessary measures to assure payment should AT&T become delinquent with its payments to Sprint. Second, AT&T's language is an overreaction to losses it claims to have incurred over the years, which grossly tips the balance decidedly in favor of AT&T as the Billing Party to the point of being a barrier to competition. Third, Sprint has a long and solid history with AT&T and, therefore, AT&T's heavy-handed payment assurance language is blatantly excessive and unnecessary and is therefore, unreasonable.

To be clear, despite Sprint's proposal that deposit language be mutual, AT&T will likely be billing Sprint in far greater amounts than Sprint will likely be billing AT&T. If AT&T's onerous deposit language is adopted, it will create a greater burden on Sprint than AT&T. Given the experience of the Parties' long standing relationship,

AT&T has not demonstrated that, as to Sprint, it is appropriate to apply these requirements.

Q. Does Sprint's proposed language reasonably provide for the Billing Party to secure amounts billed to the Billed Party?

A. Yes it does. Sprint's language imposes reasonable constraints that will prevent a Party from demanding payment assurance unless warranted by extreme circumstances. Absent such extreme circumstances, there is too great a risk that a Billing Party could attempt to use a deposit mechanism as a competitive weapon to needlessly encumber the Billed Party's capital. In addition, Sprint's language allows both Parties to the Agreement to gain assurance of payment, not just AT&T.

Q. What language does Sprint propose to resolve Issue 51?

A. Sprint proposes the following language:

9.0 Assurance of Payment

9.1 Based upon the Parties' experience throughout the time any interconnection agreement between the Parties has been in effect, no deposit amount is required from either Party as of the Effective Date.

9.2 If (i) the Billed Party does not pay undisputed charges due under this Agreement for more than fifteen (15) business days after the original Bill Due Date(s), (ii) Billed Party does not cure such failure to pay within ten (10) days of Billing Party's subsequent written notice to the Billed Party of such non-payment, and (iii) Billed Party's total unpaid undisputed charges due under this Agreement is more than one-

hundred thousand dollars ($100,000), then Billing Party may request the Billed Party, during the term of this Agreement, to tender a deposit in an amount to be determined by the Billing Party in good faith using the Standards set forth in Section 9.3.

9.3 Billing Party will rely upon commercially reasonable factors to determine the need for and amount of any Deposit. These factors may include, but are not limited to, payment history, number of years in business, history or service with Billing Party, bankruptcy history, current account treatment status and financial statement analysis. Upon the conclusion of this review, if the Billing Party continues to request a Deposit, at the Billed Party's written request, Billing Party will provide an explanation in writing to the Billed Party justifying such request for a Deposit.

9.4 The Billed Party will satisfy the deposit request within thirty (30) days following the request or explanation therefore, unless the Billed Party disagrees with the request for deposit and invokes Dispute Resolution.

9.5 In no event, however, will the total amount being held in Deposit exceed the lesser of Billed Party's total monthly billing under this Agreement for one month, or fifty-thousand dollars ($50,000). Such Deposit shall take the form, at Billed Party's option, of cash, an Irrevocable Letter of Credit, or Surety Bond. Interest at the rate of 10% per year will be paid to the Billed Party for any period that a cash deposit is held by Billing Party.

9.6 Any deposit will be held by Billing Party as a guarantee for the payment of charges. A Deposit does not relieve Billed Party of the responsibility for prompt payment of bills. Interest at the rate of 10% per year will be paid to the Billed Party for any period that a Cash Deposit is held by Billing Party.

9.7 If during the course of this Agreement the Billed Party paying a Deposit establishes a minimum of twelve (12) consecutive months good payment history with the Billing Party, the Billing Party holding a Deposit shall return the Deposit, with interest: provide, however, that the terms and conditions set forth herein shall continue to apply for the remainder of the Term. In determining whether a Billed Party has established a minimum of twelve (12) consecutive months good payment history, the Billed Party's payment record for the most recent twelve (12) billing months shall be considered.

Q. Has AT&T modified the description of this arbitration issue in its version of the Decision Point List ("DPL")?

A. Yes. AT&T's issue description in the DPL consists of four sub-parts that attempt to address the assurance of payment issue at a more detailed level. I will address each of the AT&T issues description sub-parts below.

Q. What is the issue description associated with AT&T's first sub-part?

A. Sub-part (a) of AT&T's issue description reads: "Should the deposit requirements apply to both parties or only the requesting carrier?"

Q. Is this sub-part already addressed in your testimony?

A. Yes. This topic is addressed in my testimony associated with Issue 50 above.

Q. What is the issue description associated with AT&T's second sub-part?

A. Sub-part (b) of AT&T's issue description reads: "Should the ICA provide that no deposit requirement is required as of the Effective Date based upon Sprint's and AT&T's dealings with each other under their previous interconnection agreements".

Q. Is this sub-part (b) in reference to language proposed by Sprint?

A Yes. Sprint is proposing language recognizing that there is no required deposit as of the effective date of the Agreement. Sprint's proposed language recognizes that Sprint does not have a deposit with AT&T at this time. AT&T does not have any counter

language to Sprint's proposal. Sprint's language acknowledges that it is specific to Sprint because it is "[b]ased upon the "Parties' experience throughout the time any interconnection agreement between the Parties has been in effect…"

Q. What is AT&T's position on this sub-issue?

A. AT&T indicates that it has no intention to request a deposit from Sprint as of the Effective Date of the new ICA, and that AT&T would not be permitted to do so under Sprint's proposed language for GT&C's Section 9.1, unless Sprint's financial circumstances changed substantially for the worse. AT&T then goes on to state that it objects to Sprint's proposed language in Section 91.1 out of fear another carrier might adopt the agreement and claim that it is entitled to make no deposit regardless of its financial position.

Q. What is your response to AT&T's position?

A. AT&T appears to be in agreement with Sprint's proposed language in Section 9.1 as it states that prior experience between Sprint and AT&T does not warrant the collection of a deposit on the Effective Date of the new ICA.

Q. What is the issue description associated with AT&T's third sub-part?

A. Sub-part (c) of AT&T's issue description reads: "Under what circumstances should a deposit be required and what should be the amount of the deposit?"

Q. Is this sub-part already addressed in your testimony?

A. Yes. This topic is addressed in my testimony. Specifically, Sprint's proposed language for GT&C Sections 9.1 through 9.7, as detailed above, address this topic.

Q. What is the issue description associated with AT&T's fourth sub-part?

A. Sub-part (d) of AT&T's issue description reads: "What other terms and conditions governing deposits should be included in the ICA?"

Q. Is this sub-part already addressed in your testimony?

A. Yes. Similar to AT&T's third sub-topic, the fourth sub-topic is also addressed in my testimony. Specifically, Sprint's proposed language for GT&C Sections 9.1 through 9.7, as detailed above, addresses this topic.

Section VI.B Escrow

Issue 52 (VI.B (1)): Is it appropriate to include good faith disputes in the definitions of "Non-Paying Party", or "Unpaid Charges"? (GT&C Sections 2.77, 2.124)

Q. Please describe Issue 52.

A. Sprint's definitions of "Non-Paying Party" and "Unpaid Charges" include undisputed amounts only. AT&T's definitions on the other hand include any charges billed by the Billing Party.

Q. Why does Sprint believe that only undisputed charges be included in these definitions?

A. A party to the ICA should be entitled to file good faith disputes without the "disputed" amount being considered "Unpaid". Payment is rightly "due" on properly assessed charges, and such assessment does not occur for the amounts disputed in good-faith until the dispute is resolved. If payment is due on improperly assessed charges, the Billing Party has no incentive to ensure the billed amounts are accurate, or to quickly and efficiently work through any billing disputes. In addition, the Billed Party would bear the additional financial obligation of paying invoiced amounts that may ultimately prove to be inaccurate.

Q. What language does Sprint propose to resolve the "Non-Paying Party" portion of this issue?

A. Sprint proposes the following language in General Terms and Conditions Section 2.77:

> "Non-Paying Party" means the Party that has not made a payment of undisputed amounts by the Bill Due Date of all amounts within the bill rendered by the Billing Party.

Q. What language does Sprint propose to resolve the "Unpaid Charges" portion of this issue?

A. Sprint proposes the following language in General Terms and Conditions Section 2.124:

> "Unpaid Charges" means any undisputed charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date.

Issue 53 (VI.B (2)): Should the Billed Party be required to pre-pay good faith disputed amounts into an escrow account pending resolution of the good faith dispute? (GT&C Section 10.8 AT&T Sections 10.8.1 through 10.9.2.5.3, 10.12, 10.12.1, 10.12.2, 10.12.3, 10.12.4,10.13, 11.3.3, 11.3.4, 11.5.2, 12.4.2)

Q. Please describe Issue 53.

A. AT&T's proposed language would require the Billed Party to pre-pay good faith disputed amounts into an escrow account pending resolution. Sprint disagrees and the FCC has indicated that such a practice is unreasonable.

Q. What is Sprint's position with respect to AT&T's proposed escrow language?

A. A requirement that good faith disputed amounts be placed into an escrow account is a per-se unreasonable requirement. Billing disputes are necessitated when the Billing Party issues inaccurate bills. It is, therefore, inappropriate to require the Billed Party to remit presumptively erroneous billed amounts to a third party before the Billed Party can file a legitimate dispute. A Billed Party should only be responsible for payment of valid charges at the end of the dispute resolution process. An escrow

requirement is unnecessary and anti-competitive when applied as a "condition-precedent" to a dispute being considered a "valid" dispute, and does not resolve the underlying problem of inaccurate billing.

Q. Why is Sprint opposed to an escrow requirement for disputed amounts?

A. AT&T has an obligation to render an accurate bill. Sprint's experience, however, is that AT&T is as prone to issue an incorrect bill as any other carrier and, in the face of an escrow requirement that serves as a condition-precedent to a party's right to challenge an AT&T bill, there is no reason to believe AT&T's billing practices would somehow become *more* accurate. If there is a billing error, Sprint has the right to dispute the bill – without having to "pay-in" to a third party before it can exercise such right – and the Parties need to work together to resolve the dispute. Sprint does not escrow billing disputes in the normal course of business. An escrow account for disputed charges would be particularly burdensome give the fact there can be a large number of billing disputes, many for relatively small dollar amounts. It can take a year or more to resolve complex billing issues, and additional resources would be needed to track and reconcile the escrow amount deposits, balance, and payments, especially given the fact that the billing disputes may be filed and resolved on multiple accounts each month.

Q. Does Sprint have other concerns with AT&T's proposed escrow requirement?

A. Yes. It is clear that an AT&T imposed interest-bearing escrow account requirement would have a practical effect of discouraging the Billed Party from filing disputes by requiring increased working capital requirements to fund the filing of a dispute. If AT&T is allowed to force its escrow requirement upon competitors, and thereby discourage competitors from bringing legitimate disputes, AT&T could reap a windfall generated by its own erroneous billing practices. On this basis, it is important that Sprint's incentive to dispute incorrect charges on the bill not be diminished by an escrow requirement. The bottom line is that, so long as AT&T renders the bill accurately, Sprint would have no need to file a dispute in the first place, thereby making this escrow issue moot.

In addition, as stated above the Parties are able to resolve billing disputes without ICC intervention because there is no escrow requirement. If a disputing Party is required to escrow disputed amounts, it will likely seek immediate ICC intervention to resolve the dispute.

Q. Does the escrow requirement do anything to resolve the problem of inaccurate billing?

A. No. In fact there is a potentially chilling, punitive effect on Sprint lodging legitimate disputes against AT&T bills, with no repercussions for AT&T if it renders an inaccurate bill. Under AT&T's proposed approach, if AT&T renders an inaccurate bill, and Sprint registers a dispute and wins, AT&T would suffer no consequences for

its billing inaccuracy. Meanwhile, Sprint would be required to place working capital in escrow and bear the additional administrative burden of managing the escrow account, as well as immediately seeking ICC intervention. Because of these inequities, AT&T has no incentive to ensure it issues accurate bills, which is the real root of this issue.

Q. Has the FCC previously determined that it is an unreasonable practice for a billing carrier to prepay disputed amounts pending resolution of the dispute?

A. Yes. In its Memorandum Opinion and Order in *the Matter of Sprint Communications Company L.P., v. Northern Valley Communications, LLC*, the FCC stated:

> Similarly, the Tariff provision that requires all disputed charges be paid "in full prior to or at the time of submitting a good faith dispute" is unreasonable……This provision is unreasonable, because it conflicts with sections 206 to 208 of the ACT, which allow a customer to complain to the Commission or bring suit in federal district court for the recovery of damages regarding a carrier's alleged violation of the Act.[21]

Q. Has the ICC also previously determined that it is an unreasonable practice for a billing carrier to require a disputing party to pre-pay disputed amounts into an escrow account pending resolution of the dispute?

A. Yes the ICC has ruled against the practice of establishing an escrow fund for disputed amounts on at least two separate occasions. First, in its Arbitration Decision in the

[21] See *Sprint Communications Company L.P., v. Northern Valley Communications, LLC*, FCC 11-111, Memorandum Opinion and Order, 26 FCC Rcd 10780 (July 18, 2011).

matter of the TDS Metrocom, Inc., Petition for Arbitration with Illinois Bell Telephone Company, the Commission stated:

> The Commission is of the opinion that requiring TDS to escrow disputed amounts could have the effect of reducing TDS' ability to compete. The Commission determines the language on escrow should be deleted.[22]

Similarly, in its Arbitration decision in the matter of MCI's Petition for Arbitration with Illinois Bell Telephone Company, the Commission stated:

> The Commission rejects SBC's proposed escrow requirement, finding that it is unnecessary, contrary to past practice, and contrary to our previous determination on the matter. See Docket No. 01-0338, pg 6. It is also inappropriate for SBC to shift the burden to MCI to prove it would be harmed by the implementation of SBC's proposal.[23]

Q. What language does Sprint propose to resolve this issue?

A. Sprint proposes the following language:

> 10.8 If Unpaid Charges are subject to a Billing Dispute between the Parties, the Billed Party must, by the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 12.4 below. On or before the Bill Due Date, the Disputing Party must pay all undisputed amounts to the Billing Party.

Q. Has AT&T modified the description of this arbitration issue in its version of the Decision Point List ("DPL")?

[22] See *TDS Metrocom, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant To Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 01-0338,* Arbitration Decision, Page 6, Issued August 8, 2001.

[23] See *MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 04-0469,* Arbitration Decision, Page 30, Issued November 30, 2004.

A. Yes. AT&T's issue description in the DPL consists of three sub-parts that attempt to address the assurance of payment issue at a more detailed level. I will address each of the AT&T issues description sub-parts below.

Q. What is the issue description associated with AT&T's first sub-part?

A. Sub-part (a) of AT&T's issue description reads: "Should a Party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?"

Q. Is this sub-part already addressed in your testimony?

A. Yes. This topic is basically a re-worded version of the Sprint issue description in the DPL filed along with its arbitration petition in this docket. Therefore, my testimony for Issue 53 addresses the first sub-part of AT&T's revised issue description.

Q. What is the issue description associated with AT&T's second sub-part?

A. Sub-part (b) of AT&T's issue description reads: "Should a Party that disputes a bill be required to use the preferred form or method of the Billing Party to communicate a dispute to the billing party?"

Q. Is this sub-part already addressed in your testimony?

A. Yes. This topic is addressed in my testimony associated with Issue 60 below.

Q. What is the issue description associated with AT&T's third sub-part?

A. Sub-part (c) of AT&T's issue description reads: "Should the ICA refer to the Party that disputes and does not pay a bill as the 'Disputing Party' or the 'Non-Paying Party'?"

Q. What is AT&T's position on this sub-part to Issue 53?

A. AT&T believes the Party that disputes a bill should be referred to as the Non-Paying party, simply because it meshes with their proposed escrow language.

Q. Is AT&T's position valid?

A. No. AT&T's position pre-supposes that payment is due on a disputed amount, when in fact payment is not due for a legitimate dispute. Automatically assuming a Disputed Amount is due and in turn treating such Disputed Amounts as unpaid charges serves no purpose other than to eliminate the benefit of dispute process available established by the applicable rules.

VI.D Disconnection for Non-Payment

Issue 57 (VI.D (1)): Under what circumstances may a Party disconnect the other Party for nonpayment, and what terms should govern such disconnection? (GT&C Sections 10.14, 11.1, 11.2, 11.3.2, 11.3.3, 11.3.4 AT&T Sections 11.5 through 11.8.3)

Q. Please describe Issue 57.

A. AT&T has proposed language that would allow a party to disconnect ***all*** Interconnection services even if the charges associated with only one service are not paid or disputed.

Q. What is Sprint's position on this issue?

A. Disconnection of service is so customer-impacting that it should only be imposed as a last resort and, even then, only after the Billing Party has received ICC approval. Additionally, the ***only*** services that should be disconnected in this scenario are those for which payment has not been made.

Q. What is AT&T's position on this issue?

A. It seems as though AT&T wants as little restriction as possible when it comes to disconnecting the services provided to a competing carrier. AT&T's proposal indicates that it would only provide notice to the ICC when an explicit ICC rule requires it to do so. Additionally, AT&T wants the contractual right to disconnect ***all*** services provided by the Billing Party if the Billed Party fails to pay or dispute even just one service.

Q. Is AT&T's position reasonable?

A. No. AT&T's position on disconnection of services sanctions the most extreme of all remedies available to a Billing Party for the non-payment of services and should be rejected.

Q. Why should a non-paying party have any leeway to continue receiving any services from a Billing Party when it fails to pay its bill?

A. As stated earlier, disconnection of services can have significant end-user customer affecting results and should only be used as a last resort. If AT&T is faced with an unscrupulous carrier that is not cooperating through the Dispute Resolution process, AT&T always has recourse – go to the Commission.

Q. What language does Sprint propose to resolve this issue?

A. Sprint proposes the following language:

> 11.0 Nonpayment and Procedures for Disconnection
>
> 11.1 Failure to make payment as required by Section 10.8 will be grounds for disconnection of Interconnection products and/or services furnished under this Agreement for which payment was required. If a party fails to make such payment, the Billing Party may send a Discontinuance Notice to such Non-Paying Party. The Non-Paying Party must remit all Unpaid Charges, excluding Disputed Amounts, to the Billing Party within forty-five (45) calendar days of the Discontinuance Notice.
>
> 11.2 Disconnection for non-payment will only occur as expressly ordered by the Commission.
>
> …11.3.2 pay all undisputed Unpaid Charges to the Billing Party.[24]

[24] While the referenced 11.3.2 language appears to be a stray clause as cited above, when read in the context of the entire section 11, it becomes clear that this merely represents how

Issue 58 (VI.D (2)): Should the period of time in which the Billed Party must remit payment in response to a Discontinuance Notice be forty-five (45) or fifteen (15) days? (GT&C Sections 2.40, and 11.3)

Q. Please describe Issue 58.

A. The parties essentially agree on the definition of "Discontinuance Notice" with the exception of whether the recipient of the notice must act in 15 days or 45 days.

Q. What is Sprint's position on this issue?

A. Disconnection of service is a drastic remedy, therefore, it is reasonable to provide forty-five (45) day notice to avoid potential disruption or disconnection of service. Forty-five days will give the parties ample time to ensure they are in agreement over the facts that the noticing party contends exists to give rise to such notice.

Q. Are there potential extenuating circumstances that would further support Sprint's suggested 45 day notice period?

A. Yes. Sprint processes thousands of invoices every month and it is entirely possible that one of those invoices could be lost in its electronic transmission. If that happens, it is overly harsh for the first notice Sprint receives regarding the misplaced invoice to

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Sprint proposes to end the section. AT&T, conversely, would continue with further language associated with its escrow payment requirements that Sprint has disputed and addressed elsewhere.

be notification of an impending discontinuance of service in 15 days. A 45-day notice period is more reasonable.

Q. What language does Sprint propose to resolve this issue?

A. Sprint proposes the following language:

> 2.40 Discontinuance Notice" means the written notice sent by the Billing Party to the other Party that notifies the Non-Paying Party that in order to avoid disruption or disconnection of Interconnection products and/or services, furnished under this Agreement, the Non-Paying Party must remit all undisputed Unpaid Charges to the Billing Party within forty-five (45) calendar days following receipt of the Billing Party's notice of undisputed Unpaid Charges.
>
> 11.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than forty-five (45) calendar days following receipt of the Billing Party's discontinuance notice:

VI.E Billing Disputes

Issue 60 (VI.E (2)): Can a Party require that its form be used for a billing dispute to be valid? (GT&C Sections 10.8, 12.4.1)

Q. Please describe Issue 60.

A. AT&T proposes to mandate that Sprint utilize an internal AT&T billing dispute form that Sprint has never used because Sprint has its own automated system for disputing a carrier's improper billing.

Q. What is Sprint's position on this issue?

A. To the extent that AT&T issues improper bills, Sprint maintains its right to use Sprint's existing automated dispute system it is currently using and has used for years.

Q. Why does Sprint object to using AT&T's dispute form?

A. On its face, Sprint objects to a contractually mandated use of an internal AT&T billing dispute form because the only way Sprint could comply with such a mandate at this point would be on a manual basis that will impose additional costs on Sprint. Keep in mind, Sprint's automated system provides AT&T everything that is necessary to identify and process a Sprint dispute – AT&T just doesn't like "how" it is received. The end result of a contractual mandate to use an AT&T form that Sprint does not otherwise use is clearly anti-competitive in that: a) Sprint must incur a new manual cost to dispute what it considers to be improper AT&T billings; and, b) if Sprint fails to incur such costs and simply continues to use its automated system, AT&T will, no doubt, be in a position to render whatever bill it chooses, right or wrong, and prospectively reject Sprint's automated disputes as being non-compliant with the contract mandate.

Q. Does Sprint provide all of the necessary information, using the existing Sprint format, to enable AT&T to understand the nature of the Billing Dispute?

A. Yes. In fact, Sprint has used the existing Billing Dispute format with AT&T for years and the parties have experienced no difficulty understanding the nature of any Billing Dispute. Sprint utilizes this same Billing Dispute system with every major carrier that invoices Sprint.

Q. What language does Sprint propose to resolve this issue?

A. Sprint proposes the following language:

> 10.8 If Unpaid Charges are subject to a Billing Dispute, between the Parties, the Billed Party must, by the Bill Due Date, give notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 12.4 below.
>
> 12.4.1 The following dispute resolution procedures will apply with respect to any Billing Dispute arising out of or relating to the Agreement. The written notice sent to the Billing Party for Disputed Amounts will, in the Billed Party's sole discretion, be submitted through either (a) the Billed Party's process to submit disputes, or (b) the Billing Party's billing claims dispute form.

Q. Does this conclude your Verified Statement?

A. Yes.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP. Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a Ameritech Illinois	)	Docket No. 12-0550

VERIFICATION

I, James Burt do on oath depose and state that the facts contained in the foregoing document are true and correct to the best of my knowledge and belief.

Jim Burt

SIGNATURE OF PERSON VERIFYING DOCUMENT

SIGNED AND SWORN BEFORE ME THIS 5th day of December, 2012.

Shelly L Green

NOTARY PUBLIC

NOTARY PUBLIC - State of Kansas
Shelly L Green
My Appt. Expires 1/5/2016